

1 to notice and receipt of public comment, specifying the sched-
2 ule of fees applicable to the processing of requests under this
3 section and establishing procedures and guidelines for deter-
4 mining when such fees should be waived or reduced. Such
5 schedules shall conform to the guidelines which shall be pro-
6 mulgated, pursuant to notice and receipt of public comment,
7 by the Office of Management and Budget and which shall
8 provide for a uniform schedule of fees for all agencies. Such
9 regulations—

10 “(a) shall provide for the payment of all costs rea-
11 sonably and directly attributable to responding to the
12 request, which shall include reasonable standard
13 charges for the costs of services by agency personnel in
14 search, duplication, and other processing of the re-
15 quest. The term ‘processing’ does not include services
16 of agency personnel in resolving issues of law and
17 policy of general applicability which may be raised by
18 a request, but does include services involved in exam-
19 ining records for possible withholding or deletions to
20 carry out determinations of law or policy. Such regula-
21 tions may also provide for standardized charges for cat-
22 egories of requests having similar processing costs,

23 “(b) shall provide that no fee is to be charged by
24 any agency with respect to any request or series of re-
25 lated requests whenever the costs of routine collection

1 and processing of the fee are likely to equal or exceed
2 the amount of the fee, and

3 “(c) in the case of any request or series of related
4 requests for records containing commercially valuable
5 technological information which was generated or pro-
6 cured by the Government at substantial cost to the
7 public, is likely to be used for a commercial purpose,
8 and will deprive the Government of its commercial
9 value, may provide for the charging of a fair value fee
10 or royalties, or both, in addition to or in lieu of any
11 processing fees otherwise chargeable, taking into ac-
12 count such factors as the estimated commercial value
13 of the technological information, its costs to the Gov-
14 ernment, and any public interest in encouraging its uti-
15 lization.

16 Nothing in this subparagraph shall supersede fees chargeable
17 under a statute specifically providing for setting the level of
18 fees for particular types of records.

19 “(ii) With respect to search and duplication charges,
20 documents shall be furnished without charge or at a reduced
21 charge where the agency determines that waiver or reduction
22 of the fee is in the public interest because furnishing the in-
23 formation can be considered as primarily benefiting the gen-
24 eral public and not the commercial or other private interests
25 of the requester. With respect to all other charges, docu-

1 ments shall be furnished without such charges where the
2 agency determines that the information is not requested for a
3 commercial use and the request is being made by or on behalf
4 of (a) an individual, or educational, or noncommercial scien-
5 tific institution, whose purpose is scholarly or scientific re-
6 search; (b) a representative of the news media; or (c) a non-
7 profit group that intends to make the information available to
8 the general public.

9 “(iii) One-half of the fees collected under this section
10 shall be retained by the collecting agency to offset the costs
11 of complying with this section. The remaining fees collected
12 under this section shall be remitted to the Treasury’s general
13 fund as miscellaneous ~~receipts~~. *receipts, except that any*
14 *agency determined upon an investigation and report by the*
15 *General Accounting Office or the Office of Management and*
16 *Budget not to have been in substantial compliance with the*
17 *applicable time limits of paragraph (6) of this subsection*
18 *shall not thereafter retain any such fees until determined by*
19 *the agency making such finding to be in substantial compli-*
20 *ance.”.*

TIME LIMITS

22 SEC. 3. Paragraph (6) of section 552(a) of title 5, United
23 States Code, is amended to read as follows:

1 “(6)(A) Except as otherwise provided in this paragraph,
2 each agency, upon any request for records made under para-
3 graph (1), (2), or (3) of this subsection, shall—

4 “(i) determine within ten working days after the
5 receipt of any such request whether to comply with
6 such request and shall immediately notify the requester
7 of such determination and the reasons therefor, and of
8 the right of such person to appeal to the head of the
9 agency any adverse determination; and

10 “(ii) make a determination with respect to any
11 appeal within twenty working days after the receipt of
12 such appeal. If on appeal the denial of the request for
13 records is in whole or in part upheld, the agency shall
14 notify the requester of the provisions for judicial review
15 of that determination under paragraph (4) of this sub-
16 section.

17 “(B) In unusual circumstances as defined in this subpar-
18 agraph, the time limits prescribed in either clause (i) or clause
19 (ii) of subparagraph (A) may be extended by written notice to
20 the requester setting forth the reasons for such extension and
21 the date on which a determination is expected to be dis-
22 patched. No such notice shall specify a date that would result
23 in extensions of more than an aggregate of thirty working
24 days. As used in this subparagraph, ‘unusual circumstances’

1 means, but only to the extent reasonably necessary to the
2 proper processing of the particular request—

3 “(i) the need to search for and collect the request-
4 ed records from field facilities or other establishments
5 that are separate from the office processing the re-
6 quest;

7 “(ii) the need to search for, collect, and appropri-
8 ately examine a voluminous amount of separate and
9 distinct records which are demanded in a single re-
10 quest;

11 “(iii) the need for consultation, which shall be
12 conducted with all practicable speed, with another
13 agency having a substantial interest in the determina-
14 tion of the request or among two or more components
15 of the agency having substantial subject-matter interest
16 therein;

17 “(iv) a request which the head of the agency has
18 specifically stated in writing cannot be processed
19 within the time limits stated in paragraph (6)(A) with-
20 out significantly obstructing or impairing the timely
21 performance of a statutory agency function;

22 “(v) the need for notification of submitters of in-
23 formation and for consideration of any objections to
24 disclosure made by such submitters; or

1 “(vi) an unusually large volume of requests or ap-
2 peals at an agency, creating a substantial backlog.

3 “(C) Any requester shall be deemed to have exhausted
4 his administrative remedies with respect to such request if
5 the agency fails to comply with the applicable time limit pro-
6 visions of this paragraph. If the Government can show excep-
7 tional circumstances and that the agency is exercising due
8 diligence in responding to the request, the court may retain
9 jurisdiction and allow the agency additional time to complete
10 its review of the records. An agency shall not be considered
11 to have violated the otherwise applicable time limits until a
12 court rules on the issue.

13 “(D) Upon any determination by an agency to comply
14 with a request for records, the records shall be made prompt-
15 ly available to the requester, subject to the provisions of
16 paragraph (7). Any notification of denial of any request for
17 records under this subsection shall set forth the names and
18 titles or positions of each person responsible for the denial of
19 such request.

20 “(E) Each agency shall promulgate regulations, pursu-
21 ant to notice and receipt of public comment, by which a re-
22 quester who demonstrates a compelling need for expedited
23 access to records shall be given expedited access.”.

1 BUSINESS CONFIDENTIALITY PROCEDURES

2 SEC. 4. Section 552(a) of title 5, United States Code, is
3 amended by adding after paragraph (6) the following new
4 paragraph:

5 “(7)(A) Each agency shall promulgate regulations, pur-
6 suant to notice and receipt of public comment, specifying pro-
7 cedures by which—

8 “(i) a submitter may be required to designate, at
9 the time it submits or provides to the agency or there-
10 after, any information consisting of trade secrets, or
11 commercial, research, financial, or business information
12 which is exempt from disclosure under subsection
13 (b)(4);

14 “(ii) the agency shall notify the submitter that a
15 request has been made for information provided by the
16 submitter, within ten working days after the receipt of
17 such request, and shall describe the nature and scope
18 of the request and advise the submitter of his right to
19 submit written objections in response to the request;

20 “(iii) the submitter may, within ten working days
21 of the forwarding of such notification, submit to the
22 agency written objection to such disclosure, specifying
23 all grounds upon which it is contended that the infor-
24 mation should not be disclosed; and

1 “(iv) the agency shall notify the submitter of any
2 final decision regarding the release of such information.

3 “(B) An agency is not required to notify a submitter
4 pursuant to subparagraph (A) if—

5 “(i) the information requested is not designated by
6 the submitter as exempt from disclosure in accordance
7 with agency regulations promulgated pursuant to sub-
8 paragraph (A)(i), if such designation is required by the
9 agency;

10 “(ii) the agency determines, prior to giving such
11 notice, that the request should be denied;

12 “(iii) the disclosure is required by law (other than
13 this section) and the agency notified the submitter of
14 the disclosure requirement prior to the submission of
15 the information;

16 “(iv) the information lawfully has been published
17 or otherwise made available to the public; or

18 “(v) the agency is a criminal law enforcement
19 agency that acquired the information in the course of a
20 lawful investigation of possible violations of criminal
21 law.

22 “(C) Whenever an agency notifies a submitter of the
23 receipt of a request pursuant to subparagraph (A), the agency
24 shall notify the requester that the request is subject to the
25 provisions of this paragraph and that notice of the request is

1 being given to a submitter. Whenever an agency notifies a
2 submitter of final decision pursuant to subparagraph (A), the
3 agency shall at the same time notify the requester of such
4 final decision.

5 “(D) Whenever a submitter has filed objections to dis-
6 closure of information pursuant to subparagraph (A)(iii), the
7 agency shall not disclose any such information for ten work-
8 ing days after notice of the final decision to release the re-
9 quested information has been forwarded to the submitter.

10 “(E) The agency’s disposition of the request and the
11 submitter’s objections shall be subject to judicial review pur-
12 suant to paragraph (4) of this subsection. If a requester files a
13 complaint under this section, the administrative remedies of a
14 submitter of information contained in the requested records
15 shall be deemed to have been exhausted.

16 “(F) Nothing in this paragraph shall be construed to be
17 in derogation of any other rights established by law protect-
18 ing the confidentiality of private information.”.

19 JUDICIAL REVIEW

20 SEC. 5. Section 552(a)(4) of title 5, United States Code,
21 is amended—

22 (1) by amending subparagraph (B) to read as fol-
23 lows:

24 “(B) On complaint filed by a requester within one hun-
25 dred and eighty days from the date of final agency action or

1 by a submitter after a final decision to disclose submitted in-
2 formation but prior to its release, the district court of the
3 United States in the district in which the complainant re-
4 sides, or has his principal place of business, or in which the
5 agency records are situated, or in the District of Columbia,
6 has jurisdiction—

7 “(i) to enjoin the agency from withholding agency
8 records and to order the production of any agency rec-
9 ords improperly withheld from the requester;

10 “(ii) to enjoin the agency from any disclosure of
11 records which was objected to by a submitter under
12 paragraph (7)(A)(iii) or which would have been objected
13 to had notice been given as required by paragraph
14 (7)(A)(i); or

15 “(iii) to enjoin the agency from failing to perform
16 its duties under sections (a) (1) and (2).”.

17 (2) by redesignating subparagraphs (C), (D), (E),
18 (F), and (G) as subparagraphs (F), (G), (H), (I), and
19 (J), respectively, and by adding after subparagraph (B)
20 the following new subparagraphs:

21 “(C) In an action based on a complaint—

22 “(i) by a requester, the court shall have jurisdic-
23 tion over any submitter of information contained in the
24 requested records, and any such submitter may inter-
25 vene as of right in the action; and

1 “(ii) by a submitter, the court shall have jurisdic-
2 tion over any requester of records containing informa-
3 tion which the submitter seeks to have withheld, and
4 any such requester may intervene as of right in the
5 action.

6 “(D) The agency that is the subject of the complaint
7 shall promptly, upon service of a complaint—

8 “(i) seeking the production of records, notify each
9 submitter of information contained in the requested rec-
10 ords that the complaint was filed; and

11 “(ii) seeking the withholding of records, notify
12 each requester of the records that the complaint was
13 filed.

14 “(E) In any case to enjoin the withholding or the disclo-
15 sure of records, or the failure to comply with subsection (a)
16 (1) or (2), the court shall determine the matter de novo. The
17 court may examine the contents of requested agency records
18 in camera to determine whether such records or any part
19 thereof shall be withheld under any of the exemptions set
20 forth in subsection (b) of this section. The burden is on the
21 agency to sustain its action to withhold information and the
22 burden is on any submitter seeking the withholding of infor-
23 mation.”; and

24 (3) in redesignated subparagraph (H)—

1 (A) by adding "or any submitter who is a
2 party to the litigation" after "United States"; and

3 (B) by striking out "complainant" and insert-
4 ing in lieu thereof "requester".

5 PUBLIC RECORD REQUESTS

6 SEC. 6. Section 552(a) of title 5, United States Code, is
7 amended by adding at the end thereof the following new
8 paragraph:

9 "(8) In any instance in which a portion of the records
10 requested under this subsection consists of newspaper clip-
11 pings, magazine articles, or any other item which is a public
12 record or otherwise available in public records, the agency
13 may offer the requester a choice of (A) furnishing the request-
14 er with an index identifying such clippings, articles, or other
15 items by date and source, provided that such index is already
16 in existence, or (B) notwithstanding the waiver requirements
17 contained in this section, furnishing the requester with copies
18 of such clippings, articles, or other items at the reasonable
19 standard charge for duplication established in the agency's
20 fee schedule."

21 CLARIFY EXEMPTIONS

22 SEC. 7. So much of section 552(b) of title 5, United
23 States Code, as precedes paragraph (1) thereof is amended to
24 read as follows:

1 “(b) The compulsory disclosure requirements of this sec-
2 tion do not apply to matters that are—”.

3 MANUALS AND EXAMINATION MATERIALS

4 SEC. 8. Section 552(b)(2) of title 5, United States Code,
5 is amended by inserting a comma in lieu of the semicolon at
6 the end thereof and adding the following: “including such
7 materials as (A) manuals and instructions to investigators,
8 inspectors, auditors, or negotiators, to the extent that disclo-
9 sure of such manuals and instructions could reasonably be
10 expected to jeopardize investigations, inspections, audits, or
11 negotiations, and (B) examination material used solely to de-
12 termine individual qualifications for employment, promotion,
13 or licensing to the extent that disclosure could reasonably be
14 expected to compromise the objectivity or fairness of the ex-
15 amination process;”.

16 PERSONAL PRIVACY

17 SEC. 9. Section 552(b)(6) of title 5, United States Code,
18 is amended to read as follows:

19 “(6) records or information concerning individuals,
20 including compilations or lists of names and addresses
21 that could be used for solicitation purposes, the release
22 of which could reasonably be expected to constitute a
23 clearly unwarranted invasion of personal privacy;”.

2 SEC. 10. (a) Section 552(b)(7) of title 5, United States
3 Code, is amended to read as follows:

10 ~~would~~ *could reasonably be expected* to constitute an un-
11 warranted invasion of personal privacy, (D) could rea-
12 sonably be expected to disclose the identity of a confi-
13 dential source, including a State, local, or foreign
14 agency or authority or any private institution which
15 furnished information on a confidential basis, and, in
16 the case of a record or information compiled by crimi-
17 nal law enforcement authority in the course of a crimi-
18 nal investigation or by an agency conducting a lawful
19 national security intelligence investigation, information
20 furnished by a confidential source, (E) would disclose
21 techniques and procedures for law enforcement investi-
22 gations or prosecutions, or would disclose guidelines for
23 law enforcement investigations or prosecutions if such
24 disclosure could reasonably be expected to risk circum-
25 vention of the law, or (F) could reasonably be expected

1 to endanger the life or physical safety of any natural
2 person;”.

3 (b) Section 552(a) of title 5, United States Code, is
4 amended by adding after paragraph (8) thereof the following
5 new paragraph:

6 “(9) Nothing in this section shall be deemed applicable
7 in any way to the informant records maintained by a law
8 enforcement agency under an informant’s name or personal
9 identifier, whenever access to such records is sought by a
10 third party according to the informant’s name or personal
11 identifier.”.

12 ADDITIONAL EXEMPTIONS

13 SEC. 11. Section 552(b) of title 5, United States Code,
14 is amended by striking out “or” at the end of paragraph (8),
15 by striking out the period at the end of paragraph (9) and
16 inserting in lieu thereof a semicolon, and by adding the fol-
17 lowing new paragraphs after paragraph (9):

18 “(10) technical data that may not be exported
19 lawfully outside the United States without an approval,
20 authorization, or a license under Federal export laws,
21 except that this section shall apply to such data if reg-
22 ulations promulgated under such laws authorize the
23 export of such data without restriction to any person
24 and any destination; or

1 “(11) records or information maintained or origi-
2 nated by the Secret Service in connection with its pro-
3 tective functions to the extent that the production of
4 such records or information could reasonably be ex-
5 pected to adversely affect the Service’s ability to per-
6 form its protective functions.”.

7 REASONABLY SEGREGABLE

8 SEC. 12. Section 552(b) of title 5, United States Code,
9 is amended by adding after the last sentence thereof the fol-
10 lowing: “In determining which portions are reasonably segre-
11 gable in the case of records containing material covered by
12 paragraph (1) or (7) of this subsection, the agency may con-
13 sider whether the disclosure of particular information would,
14 in the context of other information available to the requester,
15 cause the harm specified in such paragraph.”.

16 PROPER REQUESTS

17 SEC. 13. Section 552(a)(3) of title 5, United States
18 Code, is amended to read as follows:

19 “(3)(A) Except with respect to the records made availa-
20 ble under paragraphs (1) and (2) of this subsection, each
21 agency, upon any request by a requester who is a United
22 States person for records which (i) reasonably describes such
23 records and (ii) is made in accordance with published rules
24 stating the time, place, fees (if any), and procedures to be

1 followed, shall make the records promptly available to the
2 requester.

3 “(B) The time limits prescribed in subparagraph (A) of
4 paragraph 6 shall be tolled whenever the requester (or any
5 person on whose behalf the request is made) is a party to any
6 ongoing judicial proceeding or administrative adjudication in
7 which the Government is also a party and may be requested
8 to produce the records sought. Nothing in this subparagraph
9 shall be construed to bar (i) a request for any records which
10 are not related to the subject matter of such pending proceed-
11 ing, or (ii) a request for any records which have been denied
12 to a party in the course of a judicial proceeding or adminis-
13 trative adjudication that is no longer pending.

14 “(C) The Attorney General, in accordance with public
15 rulemaking procedures set forth in section 553 of this title,
16 may by regulation prescribe such limitations or conditions on
17 the extent to which and on the circumstances or manner in
18 which records requested under this paragraph or under sec-
19 tion 552a of this title shall be made available to requesters
20 who are persons imprisoned under sentence for a felony
21 under Federal or State law or who are reasonably believed to
22 be requesting records on behalf of such persons, as he finds to
23 be (i) appropriate in the interests of law enforcement, or for-
24 eign relations or national defense, or of the efficient adminis-

1 tration of this section, and (ii) not in derogation of the public
2 information purposes of this section.”.

3 ORGANIZED CRIME

4 SEC. 14. Section 552 of title 5, United States Code, is
5 amended by adding a new subsection (c) as follows and redes-
6 ignating the current subsections (c), (d), and (e) as (d), (e), and
7 (f) respectively.

8 “(c) Nothing in this section shall be deemed applicable
9 to documents compiled in any lawful investigation of orga-
10 nized crime, designated by the Attorney General for the pur-
11 poses of this subsection and conducted by a criminal law en-
12 forcement authority for law enforcement purposes, if the re-
13 quested document was first generated or acquired by such
14 law enforcement authority within five years of the date of the
15 request, except where the agency determines pursuant to
16 regulations promulgated by the Attorney General that there
17 is an overriding public interest in earlier disclosure or in
18 longer exclusion not to exceed three years. Notwithstanding
19 any other provision of law, no document described in the pre-
20 ceding sentence may be destroyed or otherwise disposed of
21 until the document is available for disclosure in accordance
22 with subsections (a) and (b) of this section for a period of not
23 less than ten years.”.

1 REPORTING UNIFORMITY

2 SEC. 15. Section 552(e) of title 5, United States Code
3 (as redesignated), is amended—

4 (1) by striking out “calendar” the second and
5 fourth places it appears and inserting in lieu thereof
6 “fiscal”;

7 (2) by striking out “March” each place it appears
8 and inserting in lieu thereof “December”;

9 (3) in paragraph (4), by striking out “subsection
10 (a)(4)(F)” and inserting in lieu thereof “subsection
11 (a)(4)(I)”; and

12 (4) in the next to last sentence, by striking out
13 “subsections (a)(4) (E), (F), and (G)” and inserting in
14 lieu thereof “subsections (a)(4) (H), (I), and (J)”.

15 TECHNICAL DATA PROCEDURES

16 SEC. 16. Title 5 of United States Code is amended by
17 adding after section 559 a new section 560 as follows:

18 “SEC. 560. Each Federal agency maintaining technical
19 data exempt under subsection (b)(10) of section 552 of this
20 title shall promulgate regulations establishing registration (in-
21 cluding certification) procedures and criteria under which
22 qualified United States individuals and business concerns may
23 obtain copies of such Government-owned technical data for
24 purposes of bidding on Government contracts. No data ob-

1 tained under such procedures may be redisseminated or ex-
2 ported except as provided by law.”.

3 DEFINITIONS

4 SEC. 17. Section 552(f) of title 5, United States Code
5 (as redesignated), is amended to read as follows:

6 “(f) For purposes of this section—

7 “(1) ‘agency’ means any executive department,
8 military department, Government corporation, Govern-
9 ment-controlled corporation, or other establishment in
10 the executive branch of the Government (including the
11 Executive Office of the President), or any independent
12 regulatory agency;

13 “(2) ‘submitter’ means any person who has sub-
14 mitted to an agency (other than an intelligence
15 agency), or provided an agency access to, trade se-
16 crets, or commercial, research, or financial information
17 (other than personal financial information) in which the
18 person has a commercial or proprietary interest;

19 “(3) ‘requester’ means any person who makes or
20 causes to be made, or on whose behalf is made, a
21 proper request for disclosure of records under subsec-
22 tion (a);

23 “(4) ‘United States person’ means a citizen of the
24 United States or an alien lawfully admitted for perma-
25 nent residence (as defined in section 101(a)(20) of the

1 Immigration and Nationality Act, 8 U.S.C.
2 1101(a)(20)), an unincorporated association a substan-
3 tial number of members of which are citizens of the
4 United States or aliens lawfully admitted for perma-
5 nent residence, or a corporation which is incorporated
6 in the United States, but does not include a corpora-
7 tion or an association that is a foreign power, as de-
8 fined in section 101(a) of the Foreign Intelligence Sur-
9 veillance Act of 1978 (50 U.S.C. 1801(a));

10 “(5) ‘working days’ means every day excluding
11 Saturdays, Sundays, and Federal legal holidays; and

12 “(6) ‘organized crime’ means those structured and
13 disciplined associations of individuals or of groups of in-
14 dividuals who are associated for the purpose of obtain-
15 ing monetary or commercial gains or profits, wholly or
16 in part by illegal means, while generally seeking to
17 protect and promote their activities through a pattern
18 of graft or corruption, and whose associations generally
19 exhibits the following characteristics:

20 “(A) their illegal activities are conspiratorial,

21 “(B) in at least part of their activities, they
22 commit acts of violence or other acts which are
23 likely to intimidate,

24 “(C) they conduct their activities in a me-
25 thodical or systematic and in a secret fashion,

1 “(D) they insulate their leadership from
2 direct involvement in illegal activities by their or-
3 ganizational structure,

4 “(E) they attempt to gain influence in gov-
5 ernment, politics, and commerce through corrup-
6 tion, graft, and illegitimate means, and

7 “(F) they engage in patently illegal enter-
8 prises such as dealing in drugs, gambling, loan-
9 sharking, labor racketeering, or the investment of
10 illegally obtained funds in legitimate businesses.”.

11 *PUBLICATION OF EXEMPTION 3 STATUTES*

12 *SEC. 18. Section 552 of title 5, United States Code, is*
13 *amended by adding a new subsection (g) as follows:*

14 *“(g) Within two hundred and seventy days of the date*
15 *of the enactment of this subsection, any agency which relies*
16 *or intends to rely on any statute which was enacted prior to*
17 *the date of enactment of this subsection, or during the thirty-*
18 *day period after such date to withhold information under sub-*
19 *section (b)(3) of this section, shall cause to be published in*
20 *the Federal Register a list of all such statutes and a descrip-*
21 *tion of the scope of the information covered. The Justice De-*
22 *partment shall also publish a final compilation of all such*
23 *listings in the Federal Register upon the completion of the*
24 *two-hundred-and-seventy-day period described in the preced-*
25 *ing sentence. No agency may rely, after two hundred and*

1 *seventy days after the date of enactment of this subsection, on*
2 *any such statute not listed in denying a request. Nothing in*
3 *this subsection shall affect existing rights of any party other*
4 *than an agency."*

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[Report No. 98-221]

A BILL

Entitled "The Freedom of Information Reform Act".

SEPTEMBER 12, 1983

Reported with amendments